

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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| <b>AMENDMENT OF THE COMMISSION'S<br/>EX PARTE RULES AND OTHER<br/>PROCEDURAL RULES</b> | )<br>)<br>) | <b>GC Docket No. 10-43</b> |
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**COMMENTS OF THE  
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

To the Commission:

**I.     INTRODUCTION**

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits these comments in the above captioned-proceeding.<sup>1</sup> ITTA is an alliance of mid-sized local exchange carriers that collectively provide service to 24 million access lines in 44 states, offering subscribers a broad range of high-quality wireline and wireless voice, data, Internet, and video services. ITTA supports transparency in the Commission's decision-making processes, but, noting the Commission's conclusions regarding the apparent effectiveness of existing rules, submits that, generally, additional regulations are not necessary. To the extent, however, the Commission determines that modifications to existing rules are appropriate, ITTA provides comments on certain of the Commission's proposals, as described below.

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<sup>1</sup> *Amendment of the Commission's Ex Parte Rules and Other Procedural Rules: Notice of Proposed Rulemaking*, Docket No. 10-43, FCC 10-31 (2010) (NPRM).

## II. DISCUSSION

### 1. **ADDITIONAL REGULATIONS ARE NOT WARRANTED**

The Commission seeks comment on proposals to revise its *ex parte* regulations and other procedural rules. The Commission's intent is to make its decision-making processes "more open, transparent, and effective."<sup>2</sup> ITTA supports the Commission goal, but submits that the Commission's own conclusions deemphasize the relative necessity of rule amendments. The Commission notes in the NPRM that "the number of alleged *ex parte* rule violations . . . is small (generally not more than one or two a year)."<sup>3</sup> Moreover, it is not clear that the Commission has exerted the full strength of the current rules, as the Commission questions whether "more aggressive enforcement of our existing rules" would address certain of the concerns implicated by the proposed regulations.<sup>4</sup> In light of this indicator that the Commission has not fully tested the effectiveness of the current rules, ITTA submits that it would be premature to promulgate new ones. In the first instance, the promulgation of new regulations is a step to be taken only after existing measures are deemed inadequate. Secondly, the value of new rules is compromised *ab initio* if they will not be guided by an institutional model of meaningful enforcement. .

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<sup>2</sup> NPRM at para. 1.

<sup>3</sup> NPRM at para. 5.

<sup>4</sup> NPRM at para. 11.

The existing regulations are sufficient. For example, the Commission surmises that “some *ex parte* notices fail to comply with the rules by failing to provide an adequate summary of new data or arguments discussed in *ex parte* meetings.”<sup>5</sup> ITTA submits that two safeguard against these types of violations exist in the absence of new regulations. In the first instance, staff assigned to a relevant proceeding and who review documents filed in the docket will likely capture any discrepancies between the notification filings and the actual presentation. Moreover, parties have an interest in memorializing their presentations sufficiently, since data that is not included in an *ex parte* notification is, by definition, absent from the record upon which a sustainable order can be based. The Commission recognized this fact, stating, “[w]hen for any reason the record does not adequately reflect the contents of *ex parte* presentations . . . the Commission may lack an adequate administrative record . . . .”<sup>6</sup> Accordingly, parties have an interest in ensuring that their position is memorialized sufficiently in order to have a desired impact for the Commission’s record.

To the extent the Commission promulgates additional new rules, however, ITTA offers the following comments on the Commission’s proposals.

## **2. COMMENTS ON SPECIFIC PROPOSALS**

### **A. Proposal to Require *Ex Parte* Filing After All *Ex Parte* Presentations, and Disclosure of All Facts and Arguments Presented**

The Commission’s current rules require parties to disclose *ex parte* communications in “permit-but-disclose” proceedings only if the communication

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<sup>5</sup> NPRM at para. 3.

<sup>6</sup> NPRM at para. 6.

contains data or arguments not formerly presented to the Commission.<sup>7</sup> The Commission proposes to (a) require *ex parte* notices for all *ex parte* presentation, including those discussing previously-filed information, and to (b) require in such an *ex parte* filings a summary or specific reference (including page and paragraph numbers) to the relevant prior-filed documents. ITTA submits that such regulations are not necessary.

In the first instance, it appears that parties frequently provide notification of their *ex parte* meetings even when no new arguments or data are presented; this can be discerned from the numerous *ex parte* filings that describe particular presentations as consistent with previously-filed comments or presentations. It appears, then, that many parties are extra-judicious in their compliance with existing regulations. Accordingly, ITTA questions the value of ratifying an enforceable regulation. If, however, the Commission determines to require *ex parte* notifications for communications that address previously-submitted filings, then ITTA submits that that notifications describing a general reference to previously-filed arguments or data should be sufficient; the Commission should not require specific page or paragraph references, or other similarly-detailed citations. The Commission's Electronic Comments Filing System (ECFS) enables interested parties to easily and quickly locate filing submitted previously by the *ex parte* filer. The proposal to require specific citational references is unnecessary paperwork. If the Commission, however, promulgates more comprehensive filing requirements, then ITTA supports the expansion of the filing deadline to two-business days.<sup>8</sup>

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<sup>7</sup> 47 C.F.R. § 1.1206(b)(2).

<sup>8</sup> NPRM at para. 10.

## **B. Preference for Electronic Filings**

The Commission proposes to amend its *ex parte* rules to require notices of *ex parte* presentations to be filed electronically.<sup>9</sup> Currently, parties may file their notices of *ex parte* communications on paper or electronically. ITTA notes that the Commission's recently-enhanced ECFS enables user-friendly electronic filing, and that general industry practice appears to evince a preference for this Internet-based vehicle; indeed, the Commission recognized this.<sup>10</sup> Accordingly, ITTA questions whether there is a need to codify this preference. If, however, the Commission determines to require electronic filing, then ITTA submits that the Commission should provide sufficient accommodations for waiver of this requirement in instances where a filer lacks access to adequate facilities, or where conversion to digital media presents an undue hardship. To the extent any filing is submitted electronically, that filing should be made in machine-readable format.

## **C. The Sunshine Period Prohibition and Exceptions**

The Commission seeks comment on the "sunshine period" prohibition and exceptions. Currently, exceptions to sunshine period restrictions include presentations "required by (or made with the advance approval of) the Commission or staff for the clarification or adduction of evidence, or for resolution of issues, including possible settlement."<sup>11</sup> The Commission seeks comment on whether this exception should be narrowed to prohibit outside parties from soliciting a request from staff for an *ex parte* presentation. While ITTA agrees with the proposition that *ex parte* contacts during the

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<sup>9</sup> NPRM at para. 16.

<sup>10</sup> NPRM at para. 16.

<sup>11</sup> See NPRM at para. 23, citing 47 CFR §§ 1.1203(a)(1); 1.1204(a)(10).

Sunshine period should be limited, ITTA supports staff expertise in distinguishing those “outside initiations” that are legitimate and should be granted, and those requests that should be rejected. Therefore, ITTA considers the proposal as possibly supplanting unnecessarily Staff’s ability to discern the appropriate approach in any particular proceeding, and accordingly does not support formal prohibitions on initiations by external parties.

The Commission also seeks comment on a proposal to require that notifications of *ex parte* appearances during the Sunshine period be filed within four hours of the meeting.<sup>12</sup> Noting the rapid-expiration of Sunshine periods, ITTA supports this proposal, as well as the proposal to require that such memoranda be filed electronically and/or to be served by either e-mail or fax to all Commission staff and parties to the proceeding who have made such contact information available.<sup>13</sup> ITTA recognizes the difficulties some filers may face, consistent with those described in Section B, above, but ITTA submits that parties appearing during the Sunshine period are “on notice” that an electronic filing will be required within four hours, and that parties appearing during the Sunshine period must accept as their responsibility the duty to ensure that adequate and rapid notice is made to adversaries or other interested parties. These types of *ex parte* filings should receive priority treatment by Staff for purposes of posting to the ECFS.

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<sup>12</sup> NPRM at para. 20.

<sup>13</sup> *Id.*

#### **D. Disclosure Statements**

The Commission seeks comment on the desirability of requiring filers to submit a disclosure statement in connection with their filings in all Commission proceedings.<sup>14</sup> ITTA submits that this measure is not necessary. The identification of corporate or business entity filers can be identified with relative clarity. To the extent a filer conceals or otherwise obscures its identity, it risks adverse receipt and diminished appreciation of its arguments or data. Information that offers opportunities for testing, rebuttal, and subsequent discourse is the basis of an informed record. A filer that obscures others' ability to delve into the kernel of its interests weakens the standing of its arguments. Accordingly, filers who desire their submissions to exert a beneficial impact on the proceeding will have sufficient self-interest in disclosing their identities and their interest in the proceeding. A formal requirement to disclose the provenance of the filer need not be imposed.

#### **III. CONCLUSION**

The Commission has noted the relative paucity of complaints concerning current *ex parte* notifications, and has indicated that more aggressive enforcement of existing regulations could address certain of the issues that are the focus of proposed new

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<sup>14</sup> NPRM at para. 27.

regulations. For the reasons noted above, including, but not limited to the self-interest of filers in ensuring that their positions are memorialized properly for the record, ITTA submits that with the exception of facilitating more rapid filing during the Sunshine period, additional regulations addressing the *ex parte* notification process are not necessary.

Respectfully submitted,



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